# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 10754 of 1994

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**DALUBHAI R CHAUDHARUI & 11 - Petitioner(s)**

**Versus**

**DISTRICT PANCHAYAT & 36 - Respondent(s)**

==========

**Appearance :**

MR YN OZA for Petitioner(s) : 1 - 12.
MR DC DAVE for Respondent(s) : 1,
MR LB DABHI,AGP, PLEADER for Respondent(s) : 2, 2.2.1, 2.2.2,2.2.3
RULE UNSERVED for Respondent(s) : 3,
UNSERVED-REFUSED (R) for Respondent(s) : 3,5 - 6, 9, 14,
RULE SERVED for Respondent(s) : 4,7 - 8,10 - 13,15 - 20,22 - 25.
- for Respondent(s) : 0.0.0
- for Respondent(s) : 0.0.0

==========

**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 02/12/2005**

**ORAL JUDGMENT**

1. The petitioners, in all twelve, have filed this petition under Articles – 226 and 227 of the Constitution of India, praying for quashing and setting aside the order of respondent No.2 dated 1.6.1985 and also the order of the District Development Officer, Valsad, passed in Appeal No.179/1985 confirming the order of the Executive Engineer whereby services of the petitioners were terminated. The petitioners also prayed for quashing and setting aside the judgment and order passed by the Gujarat Civil Service Tribunal in Appeal Nos.278/1985 to 296/1985 on 31.5.1993. The petitioners also sought for the direction to the respondent to reinstate all the petitioners in job on their respective post and to order that the petitioners be allowed to perform their duties without any disturbance.

2. The case of the petitioners was that the petitioners were recruited in the office of the respondents regularly through Employment Exchange, after passing the selection examination somewhere in the year 1982. That ever since the petitioners have been serving continuously to the utmost satisfaction of the respondents. After some time, the services of the petitioners were discharged and again they were taken on job. The petitioners were continued in job on the post of Work-charge Road Clerk on different dates. The petitioners have worked continuously for six months and, thereafter, their services were terminated by the respondents. The petitioners were again taken on job after a gap of some days and were again continued for six months. During the period from 1982 till 31.5.1985 the petitioners worked for more than 240 days. The services of

the petitioners came to an end by an order dated 1.6.1985 passed by the Executive Engineer.

3. The said order of the Executive Engineer was challenged by the petitioners before the District Development Officer. However, the District Development Officer has dismissed the appeal filed by the petitioners. Despite the fact that the petitioners were recruited through Employment Exchange in accordance with the Recruitment Rules and the other persons i.e., respondent Nos.3 to 25 were not recruited through Employment Exchange, the petitioners' services were terminated and the respondent Nos.3 to 25 have been continued in job.

4. The petitioners have, thereafter, challenged the said two decisions before the Gujarat Civil

Service Tribunal at Gandhinagar in Appeal Nos.278 to 296 of 1985. All these appeals were dismissed by the Tribunal. However, while dismissing the said appeals, the Tribunal has given directions to the respondent authorities to follow the observations made therein and to consider sympathetically the case of the present petitioners for their absorption in Work-charged Employees Cadre, as per the decision of Hon'ble Supreme Court.

5. Ms.Roma Fidelis, learned advocate appearing for Mr.Y.N.OZA, for the petitioners has submitted that despite this clear cut directions issued by the Tribunal the respondents have not considered the case of the petitioners for their absorption and hence the directions issued by the Tribunal should be complied with and hence this Court, therefore, grant reliefs claimed therein.

6. Ms.Roma further submitted that orders discharging the petitioners from service without following any procedure and without issuing any notice or hearing to the petitioners, are in violation of principle of natural justice. She has further submitted that all the petitioners were recruited through Employment Exchange, in accordance with the Recruitment Rules, after following the prescribed procedure and, therefore, the petitioners ought to have been considered as senior to those who have been irregularly recruited by the respondent in the department. She has, therefore, submitted that the present petitioners should have been held senior to the respondent Nos.3 to 25 and the petitioners should have been continued in job by the respondent.

7. She has further submitted that the Tribunal has failed to appreciate that once the name of any unemployed is registered in the Employment Exchange and if at any occasion, the name of this person is sent to any department for recruitment, in that case, after recruitment, name of such person is bound to be struck off from the roll of unemployed. The respondents were in knowledge of the fact that the present petitioners were being appointed on temporary / adhoc basis and in view of this fact, the question does not arise for the respondents to say that once the name of the petitioners have been struck off from roll of unemployed persons of the Employment Exchange, their names should have been revived or registered again in the roll of Employment Exchange. She has, therefore, submitted that this is merely a formality, if at all to be done, at the end of the petitioners and the petitioners being semi-

literate persons, may forget to register their names which is otherwise impracticable for them to do so. She has further submitted that legality which is attached with the appointment of the petitioners is their appointment through Employment Exchange in terms of recruitment rules and that cannot be waived so as to give any weightage to the other appointments which are made irregularly without following any procedure of recruitment rules. Ms.Roma further submitted that if the respondents wanted to discharge the employees working in the department, then it was incumbent upon the respondents to first discharge the employees who have been irregularly recruited and, thereafter, the question comes of discharging the petitioners. Therefore, the question does not arise to discharge the petitioners at the first instance and to retain other persons, who have been irregularly recruited. Ms.Roma

further submitted that the respondent Nos.3 to 25 have been irregularly appointed without following any procedure of law by the respondent and they have been continued in service whereas the petitioners have been retrenched by the respondent authorities and, therefore, it is the act of the respondents which requires to be condemned for discontinuing the petitioners from job and continuing the respondent Nos.3 to 25. She has, therefore, submitted that the three authorities below have committed clear cut error while upholding the dismissal of the petitioners, despite the fact that the persons who were not regularly recruited were retained by the respondents.

8. Mr.L.B.Dadhi, learned AGP appearing for the respondent State, on the other hand has submitted that there is concurrent findings of

the fact given by the three authorities below and this Court while exercising its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India, should not interfere with the orders passed by these authorities. He has further submitted that the Service Tribunal has considered all the aspects at length and after considering the judgments of this Court as well as of the Hon'ble Supreme Court, clearly held that the petitioners are not entitled to be retained. He has invited the attention of the Court to para-36 of the judgment wherein Tribunal has observed that it is true that the government has right to regularise th appointment of those who were sponsored through Employment Exchange but that was not done as the appellants were only appointed for seasonal works of monsoon and, therefore, they were discharged and also they were asked to register their names in the

Employment Exchange, but they have not done so and they have again been appointed and, therefore, they have been equated with irregular appointments and thus they can be taken at par with the respondents Nos.6 to 28 who were not regularized even though the government has issued a circular in 1979. The Tribunal has further observed that it is an admitted position that the appellants were appointed after 1980 while the respondent Nos.6 to 28 were appointed before 1980 and they have put a long service and therefore they have acquired a better claim of regularization on account of their long service. The Tribunal therefore rejected the contention of the present petitioners to the effect that they are senior to respondent Nos.6 to 28 and held that it is not well founded and deserves to be rejected.

9. Mr.Dabhi, has further invited attention of the Court to the observation made in para-38 of the judgment of the Tribunal, wherein it is observed that the State Government or the Panchayat or the Corporation without entertaining any prejudice against the appellants be regularized as far as possible and if they are discharged, they should be considered for fresh appointments sympathetically, if any vacancy may arise and such candidates are willing to be absorbed. In view of these observations the grievance raised by the petitioners does not survive.

10. Even otherwise, he relied on the decision of Hon'ble Supreme Court **in the case of State of U.P and others vs. Ajay Kumar, reported in (1997) 4 Supreme Court Cases 88**, wherein it is observed that there must exist a post and either administrative instructions or statutory

rules must be in operation to appoint a person to the post. Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench of the High Court was clearly in error in directing the appellant to regularize the service of the respondent, who was working as Nursing Orderly on daily wages, to the post as and when the vacancy arises and to continue him until then.

11. Mr.Dabhi, further relied on the decision of Hon'ble Supreme Court **in the case of Himanshu Kumar Vidyarthi and others vs. State of Bihar and others, reported in AIR 1997 Supreme Court 3657**, wherein it is observed that when the appointments are regulated by the statutory rules, the concept of 'industry' to that extent

stands excluded. The Court has further observed that their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of “retrenchment”, therefore, cannot be stretched to such an extent as to cover these employees. The Court has further observed that since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.

12. Lastly, Mr.Dadhi has relied on the judgment of this Court **in the case of Amreli Municipality vs. Gujarat Pradesh Municipal Employees Union, reported in 2004(2) GLH 692**, wherein the Court has carved out certain principles, it is held in para-12.1 of the judgment that after considering the decisions cited before us, the following principles emerge;

(A) No regularization or permanency can be effected dehors the statutory provisions or the guidelines.

(B) Long service put in by the workmen itself may not be a ground to regularize services of ad hoc / temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court / Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.

(C)To avoid nepotism and corruption, no back door entry in service.

(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption.

13. Relying on all the aforesaid decisions Mr.Dabhi, has submitted that the order passed

by the Service Tribunal does not call for any interference and even otherwise the appropriate directions are issued by the Tribunal, which will be considered by the respondent authorities as and when any vacancy arises.

14. After having heard the learned advocates appearing for the respective parties and after having gone through the orders passed by the authorities and the Service Tribunal and the authorities cited before the Court, the Court is of the view that since there is concurrent finding of all the three authorities below, the Court does not think it fit and proper to interfere with the said order while exercising extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. Even otherwise, the legal position is well settled and the Court is rather very strict to issue directions to the authorities to rgularise any

daily wager or work-charged employee.

15. So far as the present case is concerned, the Service Tribunal has taken care while deciding the appeals of the present petitioners and respondents were directed to follow observations made in the judgment and cases of the appellants and other work-charged employees be considered sympathetically and absorbed in the work-charged employees cadre as per observations of Hon'ble Supreme Court in para No.51 in case of Stat of Haryana vs. Piara Singh (1992) 4 SCC p.118 as reproduced in para-37 of the said judgment, if any vacancy arises and if the appellants are willing to be absorbed. The grievance raised on behalf of petitioners is that despite this directions and despite the vacancy arises, the present petitioners were not absorbed. The respondent authorities are, therefore, directed to look

into this and see to it that if there is any vacancy and if they are entitled to be absorbed in view of the directions given by the Tribunal and in view of the order passed by this Court, their cases may be considered sympathetically. If the petitioners are still having any grievance against the compliance of the directions of the Tribunal, it is always open for them to approach the appropriate authority for ventilation of their grievance, as it give rise to fresh cause of action.

16. Subject to the aforesaid observations and directions, this petition is accordingly disposed of. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

kks